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United States of America

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 SAM MOSS KERFOOT,
15 Defendant.

CASE NO. 2:23-CR-269-DAD

STIPULATION AND PROTECTIVE
ORDER BETWEEN THE PARTIES
REGARDING DISCOVERY

16
17 STIPULATION

18 Pursuant to 18 U.S.C. §§ 3509(d) and 3771(a)(8) and Federal Rule of Criminal Procedure
19 16(d), the undersigned parties hereby stipulate and respectfully request that the Court order as
20 follows:

21 1. Some of the discovery in this case contains personal identifying information
22 regarding third parties (adults and minors), including their names, physical descriptions, telephone
23 numbers, and/or residential addresses.

24 2. This Order pertains to all discovery provided to or made available to defense counsel
25 that contains the name of, or other personally identifying information about, an identified victim or
26 minor witness (hereafter, collectively known as “protected discovery”). Such protected discovery
27 shall be identified by the government when it is produced to the defense, in a cover letter, or by a
28 specially-designated Bates range, or through an email message.

1 3. Defense counsel shall not disclose any of the protected discovery or its contents
2 directly or indirectly to any person other than their respective defendant/client, potential witnesses
3 that they are interviewing or preparing for trial, counsel for those witnesses, or anyone employed by
4 defense counsel (such as attorneys, paralegals, secretaries, experts, investigators, and law clerks) in
5 connection with the representation of the defendant in this criminal case.

6 4. Defendant may view the protected discovery in the presence of defense counsel, but
7 may not retain a copy or otherwise disseminate the contents.

8 5. The protected discovery and information therein may only be used in connection with
9 the litigation of this case and for no other purpose.

10 6. If there is a substitution of counsel prior to final disposition of the case, new counsel
11 of record must join this Protective Order before any protected discovery may be transferred from the
12 undersigned defense counsel to the new defense counsel. New defense counsel will then become
13 defense counsel for purposes of this Order, and become the custodian of the protected discovery, and
14 shall then become responsible, upon conclusion of appellate and post-conviction proceedings, for
15 complying with the provisions set forth in Paragraph 12. All members of the defense counsel,
16 whether current or past counsel, are at all times subject to the Order and are not relieved by
17 termination of representation or conclusion of the prosecution.

18 7. Defense counsel will store the protected discovery in a secure place, such as a locked
19 office, and shall use reasonable care to ensure that it is not disclosed to third persons in violation of
20 this agreement. To the extent any of the protected discovery, or any copies or reproductions thereof,
21 are stored electronically, the protected discovery shall be stored on a password-protected or
22 encrypted storage medium or device. Encryption keys shall be stored securely and not written on the
23 storage media they unlock.

24 8. If defense counsel makes, or causes to be made, any further copies of any of the
25 protected discovery, defense counsel will ensure that the following notation is inscribed on each
26 copy made, if the confidentiality of the documents is otherwise not already present on the copied
27 file(s) or hard copies: "CONFIDENTIAL – May Not Be Disseminated Except in Accordance With
28 Court Protective Order."

1 9. If defense counsel releases custody of any of the protected discovery, or authorized
2 copies thereof, to any person described in paragraph three, defense counsel shall provide such
3 recipients with copies of this Order. The parties agree that defense counsel, defense investigators,
4 and support staff shall not provide the protected discovery to the defendant or any other witness or
5 copies of the protected discovery except for the limited situations identified in this Order.

6 10. Defense counsel shall advise government counsel of any subpoenas, document
7 requests or claims for access to the protected discovery by third parties if defense counsel is
8 considering disseminating any of the protected discovery to a third party in order that the
9 government may take action to resist or comply with such demands as it may deem appropriate.

10 11. Defense counsel shall be responsible for advising the defendant, or her client, her
11 employees and other members of the defense team, and defense witnesses of the contents of this
12 Order. Defense counsel shall not provide or make available to any person described in paragraph
13 three the protected discovery until that individual has been provided a copy of this Order by defense
14 counsel.

15 12. If it becomes necessary to refer to an identified victim or minor witness during any
16 public court proceeding or in a public court filing, the parties shall use the first and last initials of the
17 identified victim or witness.

18 13. Upon final disposition of this case, including exhaustion of direct and collateral
19 appellate proceedings, defense counsel shall return the protected discovery to the government, or
20 certify in writing that the protected discovery has been destroyed, or, if defense counsel seeks to
21 maintain the protected discovery in the defense counsel's files beyond final disposition of the case,
22 seek modification of this provision from the Court. If any protected discovery is used as defense
23 exhibits, they shall be returned to the government along with the other protected discovery upon the
24 final disposition of the case, and stored with the government exhibits so long as those are required to
25 be maintained.

26 14. Nothing in this Order shall preclude a party from seeking a more restrictive protective
27 order or other court order with regard to particular discovery items.
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1 15. Defense counsel observes the right to file objections with the Court concerned the
2 protected status of any material produced by the government, and to seek a less restrictive protective
3 order, including an order requiring redactions in lieu of more restrictive measures, to ensure the
4 defendant has the proper level of access to such material in preparing his defense. The contested
5 protected materials shall be submitted in camera or under seal to the Court for evaluation, not
6 publicly filed.

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8 IT IS SO STIPULATED.

9 DATED: January 9, 2024

PHILLIP A. TALBERT
United States Attorney

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11 By: /s/ Alstyn Bennett
ALSTYN BENNETT
Assistant United States Attorney

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13 /s/ Douglas Beevers
DOUGLAS BEEVERS
Counsel for Defendant
SAM MOSS KERFOOT

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18 **ORDER**

19 By agreement of the parties, and good cause appearing, the Court hereby adopts the
20 stipulation and the terms contained therein. IT IS SO ORDERED.

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22 Dated: January 10, 2024

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25 DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE
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